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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 230724-0173]**

**RIN 0648-BM33**

**Atlantic Highly Migratory Species; 2024 Atlantic Shark Commercial Fishing Year**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would adjust quotas and retention limits and establish the opening date for the 2024 fishing year for the Atlantic shark commercial fisheries.

Within this proposed rule, NMFS also considers options for the 2024 and future fishing years to automatically open the commercial fishing year on January 1 of each year under the base quotas and default retention limits, and to increase the default commercial retention limit for the large coastal shark (LCS) fisheries. Quotas would be adjusted as required or allowable based on any underharvests from the previous fishing years. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

**DATES:** Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2023-0081, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0081 in the search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of this proposed rule and supporting documents are available from the Atlantic Highly Migratory Species (HMS) Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Ann Williamson ([ann.williamson@noaa.gov](mailto:ann.williamson@noaa.gov)) by phone at 301-427-8503.

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## **SUPPLEMENTARY INFORMATION:**

### **Background**

Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. The shark commercial retention limits, quotas, and closure requirements can be found in §§ 635.24(a), 635.27(b), and 635.28(b), respectively.

For the Atlantic shark commercial fisheries, the 2006 Consolidated HMS FMP and its amendments established default commercial shark retention limits, commercial quotas for species and management groups, and adjustment procedures for underharvests and overharvests. Regulations also include provisions allowing flexible opening dates for the fishing year (§ 635.27(b)(3)) and inseason adjustments to shark trip limits (§ 635.24(a)(8)), which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. In addition, § 635.28(b)(4) lists species and management groups with quotas that are linked. If quotas are linked, meaning when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)). Lastly, pursuant to § 635.27(b)(2), any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas will be published in the *Federal Register*.

### **Proposed Opening Date and Retention Limit Measures**

NMFS is proposing to open the 2024 fishing year on January 1, permitting the maximum allowable retention limit for LCS fisheries, and is proposing options, described below, to change the opening date and default retention limit measures for LCS fisheries for future fishing years. These options are based on catch rates and landings information for 2021, 2022, and to date in 2023. In 2022 and 2023, NMFS opened the fishing years on January 1, with the maximum retention limit of 55 LCS other than sandbar sharks per vessel per trip for Shark Directed permit holders. The 2021 fishing year opened on January 1, with the default retention limit of 45 LCS other than sandbar sharks per vessel per trip; however, the retention limit was increased in all regions to 55 LCS other than sandbar sharks per vessel per trip by the end of March (86 FR 16075, March 26, 2021; 86 FR 47395, August 25, 2021). Despite having the maximum retention limits allowed under the regulations, the quotas for the various LCS management groups were not fully harvested in 2021 or 2022. Under current catch rates, it is unlikely the current quotas will be fully harvested in 2023. Given the current number of active and inactive permit holders, NMFS does not expect catch rates to increase in the near future. As such, NMFS is proposing opening the Atlantic shark commercial fishing year on January 1 under the highest possible allowable retention limit for LCS fisheries for 2024 and considering establishing those as the default opening date and retention limit for future fishing years.

Option 1, status quo, maintains the current management measures that require NMFS to adjust quotas and retention limits and establish the opening date for the upcoming fishing year for the Atlantic shark commercial fisheries. Adjustments to quota levels for the various shark stock and management groups, commercial shark fishing opening dates, and default retention limits for directed shark permits must be proposed

and finalized prior to the start of the upcoming fishing year based on data available from the previous fishing year. As a result, quota adjustments are based on incomplete data from the previous fishing year. Additionally, because the opening of the commercial shark fishing season is dependent upon implementation of an annual rulemaking, delays caused by the regulatory process could result in the fishery not opening on time. The uncertainty of this process can also mean that fishermen and dealers are unable to plan for the fishery starting January 1. This uncertainty may be one reason why the number of active permit holders and, accordingly, catch rates, has been declining over the years. Additionally, annually establishing the quotas, default retention limits, and opening date for the upcoming fishing year can be administratively burdensome for NMFS.

Option 2, the preferred option, would revise both the start date for all Atlantic shark fisheries and the default retention limit for Shark Directed permit holders in the LCS fisheries. Specifically regarding the start date, the preferred option would revise the regulations at § 635.27(b) to have the fishery automatically open on January 1 each year under base quotas and default retention limits. However, under this option NMFS would maintain the flexibility to prevent a regional or sub-regional shark management group from automatically opening on January 1 if the respective quota was overharvested or there were indications that opening on January 1 would result in the quota being overharvested. A change in opening date for a regional or sub-regional shark management group could occur during the respective fishing year or prior to January 1 for the following fishing year. Before changing the opening date from January 1, NMFS would consider the seven “Opening Commercial Fishing Season Criteria” listed at § 635.27(b)(3). Under Option 2, each year, during the fishing year, NMFS would follow

the quota adjustment process specified in § 635.27(b)(2) and publish in the *Federal Register* an adjustment for any quota over- or underharvests based on landings reported from the previous fishing year.

The proposed January 1 start date for 2024 and future fishing years is based on recent catch rates and fishing effort. NMFS has opened the Atlantic shark fishery on January 1 for the past 8 years. NMFS considered the underharvests of the different management groups in 2023 and the past few years to determine the likely effects of the commercial quotas on shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examined the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities will be provided to fishermen in all areas. Lastly, NMFS assessed the seasonal variation of the different species and management groups, as well as seasonal variation in fishing opportunities. Based on these analyses, NMFS believes that automatically opening the Atlantic shark fishery on January 1 would not cause the commercial quotas to be exceeded, and, considering trends in current catch rates, should continue to provide equitable fishing opportunities across all areas. However, if the situation changes and a significant portion of the quota begins to be harvested in one area, NMFS may adjust retention limit, as appropriate, to provide equitable fishing opportunities in all areas during the fishing year. Furthermore, having a stable start date may provide fishermen and dealers with more certainty for business planning purposes.

The proposed default retention limit adjustment to 55 LCS other than sandbar sharks per vessel per trip for Shark Directed permit holders for 2024 and future fishing years is based on catch rates and landings information in 2023 and the past few years.

The current default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip, unless NMFS determines otherwise and publishes a notice of inseason adjustment in the *Federal Register* (§ 635.24(a)(2)). NMFS reviewed landings on a weekly basis for all species and/or management groups and determined that fishermen have been able to participate in the fishery, and landings from both Gulf of Mexico sub-regions and the Atlantic region are not projected to exceed the 2023 overall aggregated LCS quota. This review indicates that in recent years the seasonal distribution of the shark species has not had an effect on the commercial shark landings within a region or sub-region. This result could be because in recent years shark fishermen have been able to operate throughout the year and target more profitable species in other fisheries depending on the season and availability of fish, including sharks.

Under Option 2, NMFS would not change the existing regulations that allow for changes to the retention limit during the fishing year. Specifically, NMFS could continue to adjust the retention limit from 0 to 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group is open under §§ 635.27 and 635.28, and after considering the seven “Inseason Trip Limit Adjustment” criteria at § 635.24(a)(8).

The proposed automatic opening date and default retention limit combination would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. Automatically opening the fishing year on January 1 each year under base quotas and retention limits reduces the likelihood of delays caused by the regulatory process and provides more certainty to stakeholders. Additionally, any quota adjustments, based on over- and/or underharvest, could be accounted for at one time, based upon complete data from the prior fishing year. NMFS could also continue to

adjust retention limits as needed throughout the fishing year to ensure quotas are harvested and not exceeded.

Consistent with existing regulations, all of the regional or sub-regional commercial fisheries for shark management groups would remain open until December 31 each year, or until NMFS determines that the landings for any shark management group are projected to reach 80 percent of the quota given the realized catch rates and are projected to reach 100 percent of the quota before the end of the fishing season, or until a quota-linked species or management group is closed. If NMFS determines that a non-quota-linked shark species or management group fishery must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (*e.g.*, eastern Gulf of Mexico blacktip sharks, western Gulf of Mexico blacktip sharks, Gulf of Mexico non-blacknose small coastal sharks (SCS), pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the *Federal Register* a notice of closure for that shark species, shark management group, region, and/or sub-region. The closure will be effective no fewer than 4 days from the date of filing for public inspection with the Office of the Federal Register. The linked and non-linked quotas are shown in Table 1.

For the regional or sub-regional Gulf of Mexico blacktip shark management group(s), regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group(s) before landings have reached, or are projected to reach, 80 percent of the quota after considering the following criteria and other relevant factors: season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns of blacktip sharks, hammerhead sharks, and aggregated LCS; effects

on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. The fisheries for the shark species or management group would be closed from the effective date and time of the closure until the start of the following fishing year or until NMFS publishes in the *Federal Register* a notice that additional quota is available and the season is reopened.

If NMFS determines that a quota-linked species and/or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas, NMFS will publish in the *Federal Register* a notice of closure for all of the species and/or management groups in a linked group. The closure will be effective no fewer than 4 days from the date of filing for public inspection with the Office of the Federal Register. In that event, from the effective date and time of the closure until the start of the following fishing year or until NMFS announces that the season is reopened and additional quota is available (via publication of another notice in the *Federal Register*), the fisheries for all quota-linked species and/or management groups will be closed. The quota-linked species and/or management groups are: Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose sharks and Atlantic non-blacknose SCS south of 34° N. latitude.

**Table 1 – Quota Linkages and Commercial Retention Limit by Regional or Sub-Regional Shark Management Group**

Region or Sub-Region	Management Group	Quota Linkages <sup>1</sup>	Commercial Retention Limits for Directed
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			Shark Limited Access Permit Holders <sup>2</sup>
Western Gulf of Mexico	Blacktip Sharks	Not Linked	55 LCS other than sandbar sharks per vessel per trip
	Aggregated LCS	Linked	
	Hammerhead Sharks		
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	55 LCS other than sandbar sharks per vessel per trip
	Aggregated LCS	Linked	
	Hammerhead Sharks		
Gulf of Mexico	Non-Blacknose SCS	Not Linked	N/A
	Smoothhound Sharks	Not Linked	N/A
Atlantic	Aggregated LCS	Linked	55 LCS other than sandbar sharks per vessel per trip
	Hammerhead Sharks		N/A
	Non-Blacknose SCS	Linked (South of 34° N. lat. Only)	8 blacknose sharks per vessel per trip <sup>3</sup>
	Blacknose Sharks (South of 34° N. lat. Only)		
	Smoothhound Sharks	Not Linked	N/A
No Regional Quotas	Non-Sandbar LCS Research	Linked <sup>4</sup>	N/A
	Sandbar Shark Research		
	Blue Sharks	Not Linked	N/A
	Porbeagle Sharks		
	Pelagic Sharks Other Than Porbeagle or Blue		

<sup>1</sup> Section 635.28(b)(4) lists species and management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)).

<sup>2</sup> Inseason adjustments are possible.

<sup>3</sup> Applies to Shark Directed and Shark Incidental permit holders.

<sup>4</sup> Shark research permits “terms and conditions” state that when the individual sandbar or research LCS quotas authorized by the permit are landed, all fishing trips under the permit must stop.

## Proposed 2024 Commercial Shark Quotas

NMFS proposes to adjust the quota levels for the various shark stocks and management groups for the 2024 Atlantic shark commercial fishing year (*i.e.*, January 1 through December 31, 2024) based on underharvests that occurred during the 2023 fishing year, consistent with existing regulations at § 635.27(b). Overharvests and underharvests are accounted for in the same region, sub-region, or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of 5 years. If a sub-regional quota is

overharvested, but the overall regional quota is not, no subsequent adjustment is required. Unharvested quota may be added to the quota for the next fishing year, but only for shark management groups that have shark stocks that are declared not overfished and not experiencing overfishing. No more than 50 percent of a base annual quota may be carried over from a previous fishing year.

Based on 2023 harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2024 quotas for certain management groups as shown in Table 2. All of the 2024 proposed quotas for the respective stocks and management groups will be subject to further adjustment in the final rule after NMFS considers landings submitted in the dealer reports through mid-October. NMFS anticipates that dealer reports received after that time will be used to adjust 2025 quotas, as appropriate, noting that, in some circumstances, NMFS re-adjusts quotas during the subject year.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring, available underharvest (up to 50 percent of the base annual quota) from the 2023 fishing year for these management groups may be added to their respective 2024 base quotas. NMFS proposes to account for any underharvest of Gulf of Mexico blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage (§ 635.27(b)(1)(ii)(C)).

For the sandbar shark, aggregated LCS, hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark

(other than porbeagle or blue sharks) management groups, the 2023 underharvests cannot be carried over to the 2024 fishing year because those stocks or management groups are overfished, are experiencing overfishing, or have an unknown status. There are no overharvests to account for in these management groups to date. Thus, NMFS proposes that quotas for these management groups be equal to the annual base quota without adjustment, although the ultimate decision will be based on current data at the time of the final rule.

The proposed 2024 quotas by species and management group are summarized in Table 2 and the description of the calculations for each stock and management group can be found below. All quotas and landings are in dressed weight (dw) metric tons (mt). Table 2 includes landings data as of May 12, 2023. Final quotas are subject to change based on landings as of mid-October 2023.

**Table 2 – 2024 Proposed Quotas for the Atlantic Shark Management Groups**

Region or Sub-Region	Management Group	2023 Annual Quota (A)	Preliminary 2023 Landings <sup>1</sup> (B)	Adjustments <sup>2</sup> (C)	2024 Base Annual Quota (D)	2024 Proposed Annual Quota (D+C)
Western Gulf of Mexico	Blacktip Sharks	347.2 mt (765,392 lb)	225.3 mt (496,649 lb)	115.7 mt (225,131 lb)	231.5 mt (510,261 lb)	347.2 mt (765,392 lb)
	Aggregate Large Coastal Sharks <sup>3</sup>	72.0 mt (158,724 lb)	75.9 mt (167,296 lb)	-	72.0 mt (158,724 lb)	72.0 mt (158,724 lb)
	Hammerhead Sharks <sup>4</sup>	11.9 mt (26,301 lb)	<3.0 mt ( $<6,612$ lb)	-	11.9 mt (26,301 lb)	11.9 mt (26,301 lb)
Eastern Gulf of Mexico	Blacktip Sharks	37.7 mt (83,158 lb)	0.6 mt (1,394 lb)	12.6 mt (27,719 lb)	25.1 mt (55,439 lb)	37.7 mt (83,158 lb)
	Aggregate Large Coastal Sharks <sup>3</sup>	85.5 mt (188,593 lb)	<1.0 mt (327 lb)	-	85.5 mt (188,593 lb)	85.5 mt (188,593 lb)
	Hammerhead Sharks	13.4 mt (29,421 lb)	<1.0 mt (2,204 lb)	-	13.4 mt (29,421 lb)	13.4 mt (29,421 lb)
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	112.6 mt (428,215 lb)	<1.0 mt (351 lb)	-	112.6 mt (428,215 lb)	112.6 mt (428,215 lb)
	Smoothhound Sharks	504.6 mt (1,112,441 lb)	0.0 mt (0 lb)	168.2 mt (370,814 lb)	336.4 mt (741,627 lb)	504.6 mt (1,112,441 lb)
Atlantic	Aggregate Large Coastal Sharks	168.9 mt (372,552 lb)	41.8 mt (92,088 lb)	-	168.9 mt (372,552 lb)	168.9 mt (372,552 lb)
	Hammerhead Sharks	27.1 mt (59,736 lb)	12.9 mt (28,547 lb)	-	27.1 mt (59,736 lb)	27.1 mt (59,736 lb)
	Non-Blacknose Small Coastal Sharks	264.1 mt (582,333 lb)	18.8 mt (41,502 lb)	-	264.1 mt (582,333 lb)	264.1 mt (582,333 lb)
	Blacknose Sharks (South of 34° N. lat. Only)	17.2 mt (3,921 lb)	<3.0 mt ( $<6,612$ lb)	-	17.2 mt (3,921 lb)	17.2 mt (3,921 lb)
	Smoothhound Sharks	1,802.6 mt (3,973,902 lb)	47.0 mt (103,672 lb)	600.9 mt (1,324,634 lb)	1,201.7 mt (2,649,268 lb)	1,802.6 mt (3,973,902 lb)
No Regional Quotas	Non-Sandbar LCS Research	50.0 mt (110,230 lb)	<2.0 mt ( $<4,408$ lb)	-	50.0 mt (110,230 lb)	50.0 mt (110,230 lb)
	Sandbar Shark Research	90.7 mt (199,943 lb)	<22.0 mt ( $<48,500$ lb)	-	90.7 mt (199,943 lb)	90.7 mt (199,943 lb)
	Blue Sharks	273.0 mt (601,856 lb)	<2.0 mt ( $<4,408$ lb)	-	273.0 mt (601,856 lb)	273.0 mt (601,856 lb)
	Porbeagle Sharks	1.7 mt (3,748 lb)	<1.0 mt ( $<2,204$ lb)	-	1.7 mt (3,748 lb)	1.7 mt (3,748 lb)

	Pelagic Sharks Other Than Porbeagle or Blue	488.0 mt (1,075,856 lb)	9.9 mt (21,910 lb)	-	488.0 mt (1,075,856 lb)	488.0 mt (1,075,856 lb)
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<sup>1</sup> Landings are from January 1, 2023 through May 12, 2023 and are subject to change.

<sup>2</sup> Underharvest adjustments can only be applied to stocks or management groups that are declared not overfished and have no overfishing occurring. The underharvest adjustments cannot exceed 50 percent of the base quota.

<sup>3</sup> NMFS transferred 40.0 mt dw of the aggregate LCS quota from the Gulf of Mexico eastern sub-region to the western sub-region as of March 21, 2023 (88 FR 17742, March 24, 2023).

### *Shark Management Groups Where Underharvests Can Be Carried Over*

The Gulf of Mexico blacktip shark management group (which is divided between eastern and western sub-regions) and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished and overfishing is not occurring. Pursuant to § 635.27(b)(2)(ii), available underharvest (up to 50 percent of the base annual quota) from the 2023 fishing year for these management groups may be added to their respective 2024 base quotas. Reported landings for blacktip sharks and smoothhound sharks have not exceeded their 2023 quotas to date.

*Blacktip Sharks:* The 2024 proposed commercial quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (765,392 lb dw) and in the eastern Gulf of Mexico sub-region is 37.7 mt dw (83,158 lb dw). As of May 12, 2023, preliminary reported landings for blacktip sharks in the Gulf of Mexico western sub-region were 65 percent (225.3 mt dw) of their 2023 quota (347.2 mt dw), and in the eastern sub-region were at 2 percent (0.6 mt dw) of their 2023 quota (37.7 mt dw). Consistent with § 635.27(b)(1)(ii)(C), any underharvest would be divided between the two Gulf of Mexico sub-regions based on the percentages that are allocated to each sub-region (*i.e.*, 90.2 percent to the western sub-region and 9.8 percent to the eastern sub-region). As of May 12, 2023, the overall Gulf of Mexico blacktip shark management group is underharvested by 159.0 mt dw (350,307 lb dw). The proposed 2024 adjusted base annual quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (231.5 mt dw annual base quota + 115.7 mt dw 2023 underharvest = 347.2 mt dw 2024 adjusted annual quota) and in the eastern Gulf of Mexico sub-region is 37.7 mt dw (25.1 mt dw annual base quota + 12.6 mt dw 2023 underharvest = 37.7 adjusted annual quota).

*Smoothhound Sharks:* The 2024 proposed commercial quota for smoothhound

sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw) and in the Atlantic region is 1,802.6 mt dw (3,973,902 lb dw). As of May 12, 2023, there have been no smoothhound shark landings in the Gulf of Mexico region, and 3 percent (47.0 mt dw) of their 2023 quota (1,802.6 mt dw) has been landed in the Atlantic region. NMFS proposes to adjust the 2024 Gulf of Mexico and Atlantic smoothhound shark quotas for anticipated underharvests in 2023 to the full extent allowed. The proposed 2024 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (336.4 mt dw annual base quota + 168.2 mt dw 2023 underharvest = 504.6 mt dw 2024 adjusted annual quota) and for Atlantic smoothhound sharks is 1,802.6 mt dw (1,201.7 mt dw annual base quota + 600.9 mt dw 2023 underharvest = 1,802.6 mt dw 2024 adjusted annual quota).

*Shark Management Groups Where Underharvests Cannot Be Carried Over*

Consistent with the current regulations at § 635.27(b)(2)(ii), 2023 underharvests cannot be carried over to the 2024 fishing year for the following stocks or management groups because they are overfished, are experiencing overfishing, or have an unknown status: sandbar shark, aggregated LCS, hammerhead shark, non-blacknose SCS, blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups. For these stocks, the 2024 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward.

*Aggregated LCS:* The 2024 proposed commercial quota for aggregated LCS in the western Gulf of Mexico sub-region is 72.0 mt dw (158,724 lb dw) and in the eastern Gulf of Mexico sub-region is 85.5 mt dw (188,593 lb dw). The 2024 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). In a recent action, NMFS transferred 40.0 mt dw of aggregate LCS quota from the eastern Gulf of Mexico sub-region to the western Gulf of Mexico sub-region (88 FR 17742,

March 24, 2023). That inseason quota transfer would not impact the proposed actions in this rulemaking. As of May 12, 2023, preliminary reported landings for aggregated LCS in the western Gulf of Mexico sub-region were at 68 percent (75.9 mt dw) of their 2023 quota (112.0 mt dw), in the eastern Gulf of Mexico sub-region were less than 1 percent (<1.0 mt dw) of their 2023 quota (45.5 mt dw), and in the Atlantic region were 25 percent (41.8 mt dw) of their 2023 quota (168.9 mt dw). Reported landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2023 overall aggregated LCS quota to date. Given the unknown status of some species in the aggregated LCS complex, the aggregated LCS quota cannot be adjusted for any underharvests. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2024 quotas for aggregated LCS in the western and eastern Gulf of Mexico sub-regions and the Atlantic region be equal to their annual base quotas without adjustment.

*Hammerhead Sharks:* The 2024 proposed commercial quotas for hammerhead sharks in the western Gulf of Mexico sub-region is 11.9 mt dw (26,301 lb dw) and eastern Gulf of Mexico sub-region is 13.4 mt dw (29,421 lb dw). The 2024 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). As of May 12, 2023, preliminary reported landings of hammerhead sharks in the western Gulf of Mexico sub-region were less than 25 percent (<3.0 mt dw) of their 2023 quota (11.9 mt dw), in the eastern Gulf of Mexico sub-region were less than 7 percent (<1.0 mt dw) of their 2023 quota (13.4 mt dw), and in the Atlantic region were at 48 percent (12.9 mt dw) of their 2023 quota (27.1 mt dw). Reported landings from the Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2023 overall hammerhead quota to date. Given the overfished status of the scalloped hammerhead shark, the hammerhead shark quota cannot be adjusted for any underharvests. Based on

preliminary estimates and catch rates from previous years, NMFS proposes that the 2024 quotas for hammerhead sharks in the western and eastern Gulf of Mexico sub-regions and Atlantic region be equal to their annual base quotas without adjustment.

*Blacknose Sharks:* The 2024 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). This quota is available in the Atlantic region only for those vessels operating south of 34° N. latitude. North of 34° N. latitude, retention, landing, or sale of blacknose sharks is prohibited. As of May 12, 2023, preliminary reported landings of blacknose sharks in the Atlantic region were less than 17 percent (<3.0 mt dw) of their 2023 quota (17.2 mt dw). Given the overfished status of the blacknose shark, the blacknose shark quota cannot be adjusted for any underharvests. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2024 quota for blacknose sharks in the Atlantic region be equal to their annual base quota without adjustment.

*Non-Blacknose SCS:* The 2024 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (428,215 lb dw) and in the Atlantic region is 264.1 mt dw (582,333 lb dw). As of May 12, 2023, preliminary reported landings of non-blacknose SCS in the Gulf of Mexico were less than 1 percent (<1.0 mt dw) of their 2023 quota (112.6 mt dw) and in the Atlantic region were at 7 percent (18.8 mt dw) of their 2023 quota (264.1 mt). Given the unknown status of bonnethead sharks within Atlantic and Gulf of Mexico non-blacknose SCS management groups, underharvests cannot be carried forward. Based on preliminary estimates and catch rates from previous years, NMFS proposes that the 2024 quotas for non-blacknose SCS in the Gulf of Mexico and Atlantic regions be equal to their annual base quotas without adjustment.

*Blue Sharks, Porbeagle Sharks, and Pelagic Sharks (Other Than Porbeagle and*

*Blue Sharks*): The 2024 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273.0 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively. Given the current shortfin mako shark retention limit of zero in commercial and recreational HMS fisheries, the pelagic sharks (other than porbeagle or blue sharks) management group comprises only common thresher shark landings. As of May 12, 2023, landings of porbeagle sharks were less than 59 percent (<1.0 mt dw) of their 2023 quota (1.7 mt dw), and landings of blue sharks were less than 1 percent (<2.0 mt) of their 2023 quota (273.0 mt), and landings of pelagic sharks (other than porbeagle and blue sharks) were at 2 percent (9.9 mt dw) of their 2023 quota (488.0 mt dw). Given that all of these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward. Based on preliminary estimates of catch rates from previous years, NMFS proposes that the 2024 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment.

*Shark Research Fishery*: The 2024 proposed commercial quotas within the shark research fishery are 50.0 mt dw (110,230 lb dw) for research LCS and 90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of May 12, 2023, preliminary reported landings of research LCS were less than 4 percent (<2.0 mt dw) of their 2023 quota (50.0 mt dw) and sandbar shark reported landings were less than 24 percent (<22.0 mt dw) of their 2023 quota (90.7 mt dw). Because sandbar sharks and scalloped hammerhead sharks within the research LCS management group are either overfished or overfishing is occurring, underharvests for these management groups cannot be carried forward. Based on preliminary estimates, NMFS proposes that the 2024 quotas in the shark research fishery be equal to their annual base quotas without

adjustment.

### **Request for Comments**

Comments on this proposed rule and on NMFS' determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities (as discussed below in the **Classification** section), may be submitted via *www.regulations.gov*. NMFS solicits comments on this proposed rule by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** (see **DATES** and **ADDRESSES**).

### **Classification**

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

This proposed rule would adjust quotas and default retention limits and establish the opening date for the 2024 Atlantic shark commercial fisheries. This proposed rule would also consider options for 2024 and future years to automatically open the commercial fishing year on January 1 each year under the base quotas and retention limits and increase the default commercial retention limit for the LCS fisheries. NMFS would adjust quotas as required or allowable based on any overharvests and/or

underharvests from the 2023 fishing year. NMFS has limited flexibility to otherwise modify the quotas in this proposed rule. NMFS notes that the impacts of the quotas (and any potential modifications based on overharvests or underharvests from the previous fishing year) were analyzed in previous regulatory flexibility analyses, including the initial regulatory flexibility analysis (IRFA) and the final regulatory flexibility analysis (FRFA) that accompanied the 2011 Atlantic shark commercial fishing year rule (75 FR 76302, December 8, 2010). That final rule established the opening dates and quotas for the 2011 fishing season and implemented new adaptive management measures, including flexible opening dates and inseason adjustments to shark trip limits. Consistent with the adaptive management measures implemented in 2011 and based on the most recent data, in this action NMFS proposes adjusted quotas, retention limits, and opening date to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas.

This proposed rule's measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Section 603(b)(3) of the Regulatory Flexibility Act (RFA) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The SBA authorizes an agency to develop its own industry-specific size standards after consultation with the SBA Office of Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Pursuant to this process, NMFS issued a final rule that established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes (80 FR 81194, December 29, 2015; effective on July 1, 2016). The 2011 IRFA/FRFA analyzed the overall number of limited access permits, which covers all of our active participants today. NMFS still considers all HMS permit holders to be small

entities because in total they have average annual receipts of less than \$11 million for commercial fishing.

As of March 2023, this proposed rule would apply to the approximately 196 directed commercial shark permit holders, 240 incidental commercial shark permit holders, 153 smoothhound shark permit holders, and 55 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 436 directed and incidental commercial shark permit holders, to date this year, 9 permit holders landed sharks in the Gulf of Mexico region, and 28 landed sharks in the Atlantic region. Of the 153 smoothhound shark permit holders, to date this year, 25 permit holders landed smoothhound sharks in the Atlantic region, and none have landed smoothhound sharks in the Gulf of Mexico region. As described below, NMFS has determined that all of these entities are small entities for purposes of the RFA.

Based on the 2022 ex-vessel prices (Table 3), fully harvesting the unadjusted 2024 Atlantic shark commercial base quotas could result in estimated total fleet revenues of \$10,233,205. For adjusted management groups, the following are changes in potential revenues resulting from the adjustments proposed in this rule. For the Gulf of Mexico blacktip shark management group, NMFS is proposing to adjust the base sub-regional quotas upward due to underharvests in 2023. The increase for the western Gulf of Mexico blacktip shark management group could result in a potential \$232,169 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a potential \$34,926 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the base quotas

due to underharvest in 2023. This would cause a potential gain in revenue of \$381,938 for the fleet in the Gulf of Mexico region, and a potential gain in revenue of \$1,483,590 for the fleet in the Atlantic region. Since a small business is defined as having annual receipts not in excess of \$11 million, and each individual shark fishing vessel would be its own entity, the total Atlantic shark fishery is within the small entity definition since the total revenue is less than \$13 million (*i.e.*, the estimated total fleet revenues plus the potential gain in revenues due to underharvest). NMFS has also determined that the proposed rule would not likely affect any small governmental jurisdictions.

**Table 3 – Average Ex-Vessel Prices per lb dw for Each Shark Management Group, 2022**

Region	Management Group	Average Ex-Vessel Meat Price
Western Gulf of Mexico	Blacktip Sharks	\$0.91
	Aggregated LCS	\$0.83
	Hammerhead Sharks	\$0.80
Eastern Gulf of Mexico	Blacktip Sharks	\$1.26
	Aggregated LCS	\$1.09
	Hammerhead Sharks	\$0.93
Gulf of Mexico	Non-Blacknose SCS	\$1.31
	Smoothhound Sharks	\$1.03
Atlantic	Aggregated LCS	\$1.27
	Hammerhead Sharks	\$0.72
	Non-Blacknose SCS	\$1.31
	Blacknose Sharks	\$1.38
	Smoothhound Sharks	\$1.12
No Region	Shark Research Fishery (Aggregated LCS)	\$1.22
	Shark Research Fishery (Sandbar only)	\$0.98
	Blue sharks	\$0.80
	Porbeagle sharks	-
	Pelagic Sharks	\$1.51
	Other Than Porbeagle or Blue	
All	Shark Fins	-
Atlantic	Shark Fins	-
Gulf of Mexico	Shark Fins	-

All of these changes in gross revenues are similar to the gross revenues analyzed in the 2006 Consolidated HMS FMP and its Amendments 2, 3, 5a, 6, and 9. The final

regulatory flexibility analyses for those amendments concluded that the economic impacts on these small entities from adjustments such as those contemplated in this action are expected to be minimal. In accordance with the 2006 Consolidated HMS FMP, as amended, NMFS now conducts annual rulemakings in which NMFS considers the potential economic impacts of adjusting the quotas for underharvests and overharvests. For the adjustments included in this proposed rule, NMFS concludes that the effects this proposed rule would have on small entities would be minimal.

In conclusion, although this proposed rule would adjust quotas based on over- and underharvest, automatically open the commercial fishing year on January 1 each year under base quotas and retention limits, and revise the default commercial retention limit for the LCS fisheries, this proposed rule does not practically change the regulations and management measures currently in place that govern commercial shark fishing in Federal waters of the northwestern Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, nor does it effectively change how those shark fisheries have been managed over the past eight years. Furthermore, as described above, this action is not expected to significantly affect the amount of sharks caught and sold or result in any significant change in the ex-vessel revenues those fishermen could expect, because, for the most part, the proposed quotas, retention limits, and opening dates are the same as those for the prior year. In addition, as described above, for the areas in which this action proposes adjustments, the increases in revenues for the participating small entities are minimal. Therefore, NMFS has determined that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an IRFA is not required and none has been prepared. NMFS invites comments from the public on the information in this determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 635 as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.24, revise paragraph (a)(2) to read as follows:

**§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.**

\* \* \* \* \*

(a) \* \* \*

(2) The commercial retention limit for LCS other than sandbar sharks for a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may range between 0 and 55

LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks. At the start of each fishing year, the default commercial retention limit is 55 LCS other than sandbar sharks per vessel per trip unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. During the fishing year, NMFS may adjust the retention limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section.

\* \* \* \* \*

3. In § 635.27, revise paragraphs (b)(2) introductory text and (b)(3) introductory text to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(2) *Annual and inseason adjustments of commercial quotas.* NMFS will publish in the *Federal Register* any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas. Unless the opening date of a commercial shark fishery is adjusted under paragraph (b)(3) of this section, on January 1 of each year, base quotas, as established in paragraph (b)(1) of this section, will be available, and any adjustments will be published in the *Federal Register*. Within a fishing year or at the start of a fishing year, NMFS may transfer quotas between regions and sub-regions of the same species or management group, as appropriate, based on the criteria in paragraph (b)(2)(iii) of this section.

\* \* \* \* \*

(3) *Opening commercial fishing season.* Unless adjusted under this paragraph (b)(3), the commercial shark fisheries will open on January 1 of each year under the base

quotas, as established in paragraph (b)(1) of this section. If NMFS determines a commercial shark fishery or a part of a commercial shark fishery should open on a date other than January 1, NMFS will file with the Office of the Federal Register for publication notification of the opening date(s) of the relevant overall, regional, or sub-regional shark fishery(ies) for the relevant species or management group(s). Before making any decisions, NMFS would consider the following criteria and other relevant factors in establishing the opening date(s):

\* \* \* \* \*

4. In § 635.28, revise paragraphs (b)(2) and (3) to read as follows:

**§ 635.28 Fishery closures.**

\* \* \* \* \*

(b) \* \* \*

(2) *Non-linked quotas.* If the overall, regional, and/or sub-regional quota of a species or management group is not linked to another species or management group and that overall, regional, and/or sub-regional quota is available, then that overall, regional, and/or sub-regional commercial fishery for the shark species or management group will open as specified in § 635.27(b). When NMFS calculates that the overall, regional, and/or sub-regional landings for a shark species and/or management group, as specified in § 635.27(b)(1), has reached or is projected to reach 80 percent of the applicable available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1) and is projected to reach 100 percent of the relevant quota by the end of the fishing season, NMFS will file for publication with the Office of the Federal Register a closure action, as applicable, for that shark species and/or shark management group that will be effective no fewer than 4 days from date of filing. From the effective date and time of the closure until the start of the following fishing year or until NMFS announces, via the publication of a notice in

the *Federal Register*, that additional overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fisheries for that shark species or management group are closed.

(3) *Linked quotas*. As specified in paragraph (b)(4) of this section, the overall, regional, and/or sub-regional quotas of some shark species and/or management groups are linked to the overall, regional, and/or sub-regional quotas of other shark species and/or management groups. For each pair of linked species and/or management groups, if the overall, regional, and/or sub-regional quota specified in § 635.27(b)(1) is available for each pair of linked species and/or management groups, then the overall, regional, and/or sub-regional commercial fishery for both of the linked species and/or management groups will open as specified in § 635.27(b)(1). When NMFS calculates that the overall, regional, and/or sub-regional landings for any species and/or management group of a linked group have reached or are projected to reach 80 percent of the applicable available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1) and are projected to reach 100 percent of the relevant quota before the end of the fishing season, NMFS will file for publication with the Office of the Federal Register a closure action for all of the species and/or management groups in that linked group that will be effective no fewer than 4 days from date of filing. From the effective date and time of the closure until the start of the following fishing year or until NMFS announces, via the publication of a notice in the *Federal Register*, that additional overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fishery for all species and/or management groups in that linked group is closed.

\* \* \* \* \*

